

# 海问劳动法双月报（2023年11-12月）

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## Summary

### 本期摘要

法规解读：《最高人民法院关于审理劳动争议案件适用法律问题的解释（二）（征求意见稿）》发布，《刑法修正案（十二）》公布

Interpretation of Laws and Regulation: The Interpretation of the Supreme People's Court on the Application of Law in the Trial of Labor Dispute Cases (II) (Exposure Draft) was released, and the Amendment to the Criminal Law (XII) was promulgated

法规解读：上海市、海南省、重庆市以及安徽省陆续就非劳动关系人员参加工伤保险出台新规定

Interpretation of Laws and Regulation: Shanghai, Hainan, Chongqing and Anhui Have Successively Published New Regulations on the Participation of Persons not in an Employment Relationship in Work-Related Injury Insurance

新规速递：各地陆续出台优化社会保险费缴费流程的公告

Quick View of New Regulations: Announcements of Optimizing the Payment Process of Social Insurance Premiums have been issued in Various Regions



[新规速递：上海市人社局进一步规范劳务派遣用工](#)

Quick View of New Regulations: Shanghai Municipal Human Resources and Social Security Bureau Further Regulates the Labor Dispatch



[典型案例：最高院发布关于劳动合同纠纷的公报案例，陕西省、贵州省分别发布劳动人事争议典型案例](#)

Exploration of Typical Cases: The Supreme People's Court Released Typical Labor Contract Disputes Cases, and Shaanxi Province and Guizhou Province Successively Released Typical Cases of Labor and Personnel Disputes



[典型案例：上海市三法院分别发布劳动争议相关典型案例](#)

Exploration of Typical Cases: Three Courts in Shanghai Released Labor Disputes Typical Cases



[典型案例：北京市东城区人民法院发布两批劳动用工相关典型案例](#)

Exploration of Typical Cases: Beijing Dongcheng District People's Court Released Two Batches of Typical Cases Related to Labor and Employment



一、法规解读：《最高人民法院关于审理劳动争议案件适用法律问题的解释（二）（征求意见稿）》发布，《刑法修正案（十二）》公布

[Interpretation of Laws and Regulation: The Interpretation of the Supreme People's Court on the Application of Law in the Trial of Labor Dispute Cases \(II\) \(Exposure Draft\) was released, and the Amendment to the Criminal Law \(XII\) was promulgated](#)

1. 《最高人民法院关于审理劳动争议案件适用法律问题的解释（二）（征求意见稿）》发布

The Interpretation of the Supreme People's Court on the Application of Law in the Trial of Labor Dispute Cases (II) (Exposure Draft) was released

2023年12月12日,《最高人民法院关于审理劳动争议案件适用法律问题的解释(二)(征求意见稿)》(“[征求意见稿](#)”)发布,向社会公开征求意见。征求意见稿的条文涉及股权激励争议受理、仲裁时效抗辩、未订立书面劳动合同的第二倍工资、混同用工、劳动合同续订、竞业限制、用人单位单方调整工作岗位、工作地点的审查标准、无法继续履行劳动合同的情形等事项。

On 12 December 2023, the Interpretation of the Supreme People's Court on the Application of Law in the Trial of Labor Dispute Cases (II) (Exposure Draft) (the “[Exposure Draft](#)”) was released for public consultation. The provisions of the Exposure Draft involve matters such as acceptance of disputes over equity incentives, defense of arbitration limitation double pay for failure to enter into a written labor contract, mixed employment, renewal of labor contracts, non-competition, legitimacy standard for unilateral adjustment of position and workplace by the employer, and circumstances under which the performance of the labor contract cannot be continued.

我们近期从相关背景以及完善建议角度对征求意见稿进行了逐条解读(具体内容请参见[《海问·观察 / <征求意见稿>解读与建议\(上篇\)》](#)和[《海问·观察 / <征求意见稿>解读与建议\(下篇\)》](#))。

We have recently produced an article-by-article interpretation of the Exposure Draft from the perspective of relevant background as well as suggestions for improvement (for more information you may refer to the “[Haiwen Observation: Interpretation and Suggestions for the Exposure Draft \(I\)](#)” and “[Haiwen Observation: Interpretation and Suggestions for the Exposure Draft \(II\)](#)”).

## 2. 《刑法修正案(十二)》公布

The Amendment to the Criminal Law (XII) was promulgated

2023年12月29日,全国人大常委会发布《中华人民共和国刑法修正案(十二)》(“[刑法修正案](#)”),调整了贿赂类犯罪刑罚,明确对一些严重行贿情形加大刑事追责力度,提高单位行贿罪的刑罚,确定增设非国有企业人员背信和渎职相关犯罪。刑法修正案将非法经营同类营业、为亲友非法牟利和徇私舞弊低价折股、出售(国有)资产三项有关违背忠实义务的罪名主体从国有公司、企业扩展到民营企业,并在刑法修正案(草案)的基础上(参见[《海问·研究 / 海问劳动法双月报\(2023年7-8月\)》](#)和[《海问·观察 / 企业应对员工在职竞业和舞弊行为的路径选择-兼议民事救济路径与<刑法修正案\(十二\)>\(草案\)>中新的刑事追责路径》](#)),进一步将犯罪主体由“董事、经理”修改为“董事、监事、高级管理人员”,并明确了民营企业人员的具体犯罪行为。

On December 29, 2023, the Standing Committee of the National People's Congress issued the Amendment to the Criminal Law of the PRC (XII) (the “[Amendment to the Criminal Law](#)”), which adjusted the penalties for bribery-type offences strengthened criminal accountability to some serious bribery situations, increased the penalties for the offence of corporate bribery, and creates offences related to the breach of trust and dereliction of duty by personnel of non-state-owned enterprises. The Amendment to the Criminal Law extends the subject of the three offences relating to breach of

the duty of fidelity, namely illegal operation of similar businesses, illegal profit-making for relatives and friends, and transfer of equity at low prices and the sale of (State-owned) assets due to favoritism and malpractice, from State-owned companies and enterprises to private enterprises, and further revises the subject matter of the offences from “directors and managers” to “directors, supervisors, and senior management” on the basis of the draft Amendment to the Criminal Law (for more information you may refer to the “[Haiwen Research: Haiwen Labor Law Bi-Monthly Newsletter \(2023 July – August\)](#)” and the “[Haiwen Observation: Path Selection for Enterprises to Deal with Employees’ On-the-job Competition and Fraud – Also on Civil Relief Path and New Criminal Accountability Path in the Amendment to the Criminal Law \(XII\) \(Draft\)](#)”), as well as clarifying the specific criminal acts committed by the personnel of private enterprises.

**海问建议：**征求意见稿和刑法修正案均会影响到企业劳动用工的各个方面，对于企业管理行为和员工的劳动行为提出了更高的要求。企业应当在用工管理的过程中重视上述规定所述事项，提升公司治理、管理实践的合规性，确保符合最新的法律要求。

**Haiwen Suggestion:** Both the Exposure Draft and the Amendment to the Criminal Law will affect all aspects of employment in enterprises, and will impose higher requirements on the management practices of enterprises and the behaviors of employees. Enterprises should pay attention to the matters mentioned in the above provisions in the process of labor management, and enhance compliance of corporate governance and management practices to ensure alignment with the latest legal requirements.



## 二、法规解读：上海市、海南省、重庆市以及安徽省陆续就非劳动关系人员参加工伤保险出台新规定

[Interpretation of Laws and Regulation: Shanghai, Hainan, Chongqing and Anhui Have Successively Published New Regulations on the Participation of Persons not in an Employment Relationship in Work-Related Injury Insurance](#)

为进一步扩大工伤保险覆盖范围，完善工伤保险制度，各地就非劳动关系人员的工伤保险问题出台新规定。2023年11月9日，上海市人社局等四部门印发《关于本市超过法定退休年龄就业人员和实习生参加工伤保险的试行意见》；2023年11月20日，海南省人社厅等四部门印发《实习生、见习人员、超龄从业人员参加工伤保险办法（试行）》，2023年12月13日，重庆市人社局等三部门印发《关于做好超龄等从业人员参加工伤保险有关工作的通知》。三地发布的工伤保险新规包括如下要点：

To further expand the coverage of work-related injury insurance and improve the work-related injury insurance system new regulations have been published in various regions regarding work-related injury insurance for persons not in an

employment relationship. On November 9, 2023, the Shanghai Municipal Human Resources and Social Security Bureau and four other departments issued the Trial Opinions on the Participation of Employed Personnel above the Statutory Retirement Age and Interns in Work-Related Injury Insurance in Shanghai. On November 20, 2023, the Hainan Province Human Resources and Social Security Department and four other departments issued the Measures for Par in Work-Related Injury Insurance for Interns, Trainees, and Overage Employees (Trial); and on December 13, 2023, the Chongqing Municipal Human Resources and Social Security Bureau and three other departments issued the Notice on Doing Well in Work-Related Injury Insurance for Overage Practitioners and Others. The new rules on work-related injury insurance issued by the three regions include the following key points:

1. 参保人员范围：上海市、海南省和重庆市均明确了用工单位可以自愿选择为实习生、超龄从业人员单险种参加工伤保险，海南省还将见习人员也纳入参保范围。

Scope of insured persons: Regulations in Shanghai, Hainan and Chongqing clarify that employers can voluntarily choose to participate in work-related injury insurance for interns and overage workers in a single insurance policy, and regulation in Hainan also includes trainees in the scope of insurance.

2. 缴费基数：上海市按照劳动报酬确定，海南省按该省上年度全口径城镇单位就业人员平均工资确定。

Contribution base: Regulation in Shanghai specifies that the contribution base is to be determined in accordance with labor remuneration, while Hainan's regulation specifies that the contribution base is to be determined in accordance with the average wage of the entire urban workforce in that province in the previous year.

此前，浙江省人社厅等三部门于2023年5月26日印发了《浙江省用人单位招用不符合确立劳动关系情形的特定人员参加工伤保险办法（试行）》，与上海市、重庆市、海南省相比，浙江省的新规覆盖的参保人员范围更广，包括新就业形态劳动者；缴费基数灵活性更高，实际劳动报酬和社会平均工资结合确定。（参见 [《海问·研究 / 海问劳动法双月报》（2023年5-6月）](#)）。

Previously, on May 26, 2023, the Zhejiang Human Resources and Social Security Department, along with other three departments, issued the Measures on Participation in Single-type Work Injury Insurance for Specific Personnel Who Do Not Have Labor Relations (Trial). Compared with Shanghai, Chongqing, Hainan, Zhejiang, the new regulations cover a wider range of participants, including workers in new work forms. The flexibility in the contribution base is higher, determined by the combination of actual labor compensation and the average social wage (for more information you may refer to the "[Haiwen Research: Haiwen Labor Law Bi-Monthly Newsletter \(2023 May – June\)](#)").

2023年10月24日，安徽省人社厅等八部门也印发了《关于推进补充工伤保险发展有关问题的通知》，规定暂未纳入工伤保险保障范围的人员可自愿参加补充工伤保险。该补充工伤保险的保险人为商业保险机构，

投保人为用人单位或个人。

On October 24, 2023, the Anhui Province Human Resources and Social Security Department and eight other departments also issued the Notice on Issues Relating to Promoting the Development of Supplementary Work-Related Injury Insurance, which stipulates that persons who are not covered by work-related injury insurance for the time being may voluntarily participate in supplementary work-related injury insurance. The insurer of this supplementary work-related injury insurance is a commercial insurance institution, and the policyholder is the employer or individual.

**海问建议：**在非典型用工关系和新就业形态下，工伤责任风险是用工方最关注的风险之一。为控制风险，企业可以根据政策为相关人员单险种参加工伤保险或者缴纳补充工伤保险。就构成劳动关系的人员，企业仍应当按照法律规定参加社会保险。

**Haiwen suggestion:** Under atypical employment relationships and new work forms, the risk of work-related injury liability is one of the primary concerns for employers. To manage this risk, enterprises can, in accordance with policies participate in work-related injury insurance for relevant personnel or contribute to supplementary work-related injury insurance. For those who have established labor relations with the enterprise, the enterprise shall still participate in social insurance in accordance with the law.



### 三、新规速递：各地陆续出台优化社会保险费缴费流程的公告

[Quick View of New Regulations: Announcements of Optimizing the Payment Process of Social Insurance Premiums have been issued in Various Regions](#)

2023年6月，重庆市、辽宁省、云南省以及江西省等地明确了用人单位自行向税务部门申报缴纳社会保险缴纳流程的相关公告。在2023年11月至12月期间，其他地区的人社、税务等多部门也陆续发布了《关于优化调整社会保险费申报缴纳流程的公告》，将当前人力资源社会保障、医疗保障部门先核定应缴费额、再推送税务部门征收社会保险费的申报缴纳流程，优化调整为缴费人自行向税务部门申报缴纳社会保险费。

In June 2023, Chongqing, Liaoning, Yunnan, Jiangxi, and other regions published announcements regarding the self-declaration and payment process of social insurance premiums directly to the tax authorities by employers. From November to December 2023, human resources and social security departments, tax authorities, and other relevant departments in various regions, successively released announcements on optimizing and adjusting the declaration and payment process of social insurance premiums. The current process, where the human resources and social security departments first determine the payable amount and then transmit it to the tax authorities for social insurance premium

collection, has been optimized to allow the payers to self-declare and pay social insurance premiums directly to the tax authorities.

2023年11月至12月间，以下地区发布了调整社会保险费申报缴纳流程的公告：

In November and December 2023, the following regions issued announcements adjusting the declaration and payment process of social insurance fees:

| 地区              | 发布时间       | 生效时间       | 文件名称                                                                                                                                                                                                                                                                  |
|-----------------|------------|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 上海市<br>Shanghai | 2023.11.16 | 2023.12.01 | 国家税务总局上海市税务局等五部门发布《关于优化调整社会保险费申报缴纳流程的公告》<br>Announcement on Optimizing and Adjusting the Declaration and Payment Process of Social Insurance Premiums (issued by the State Administration of Taxation, Shanghai Municipal Taxation Bureau and four other departments) |
| 山西省<br>Shanxi   | 2023.11.16 | 2023.12.01 | 国家税务总局山西省税务局等五部门发布《关于优化调整社会保险费申报缴纳流程的公告》<br>Announcement on Optimizing and Adjusting the Declaration and Payment Process of Social Insurance Premiums (issued by the State Administration of Taxation, Shanxi Province Taxation Bureau and four other departments)    |
| 江苏省<br>Jiangxi  | 2023.11.17 | 2023.12.01 | 国家税务总局江苏省税务局等五部门发布《关于优化调整社会保险费申报缴纳流程的公告》<br>Announcement on Optimizing and Adjusting the Declaration and Payment Process of Social Insurance Premiums (issued by the State Administration of Taxation, Jiangxi Province Taxation Bureau and four other departments)   |
| 安徽省<br>Anhui    | 2023.11.17 | 2023.12.01 | 国家税务总局安徽省税务局等五部门发布《关于优化调整社会保险费申报缴纳流程的公告》<br>Announcement on Optimizing and Adjusting the Declaration and Payment Process of Social Insurance Premiums (issued by the State Administration of Taxation, Anhui Province Taxation Bureau and four other departments)     |
| 北京市<br>Beijing  | 2023.12.14 | 2024.01.01 | 国家税务总局北京市税务局等五部门发布《关于优化调整社会保险费申报缴纳流程的公告》<br>Announcement on Optimizing and Adjusting the Declaration and Payment Process of Social Insurance Premiums (issued by the State Administration of Taxation, Beijing Municipal Taxation Bureau and four other departments)  |
| 天津市<br>Tianjin  | 2023.12.14 | 2024.01.01 | 国家税务总局天津市税务局等五部门发布《关于优化调整社会保险费申报缴纳流程的公告》<br>Announcement on Optimizing and Adjusting the Declaration and Payment Process of Social Insurance Premiums (issued by the State Administration of Taxation, Tianjin Municipal Taxation Bureau and four other departments)  |
| 四川省<br>Sichuan  | 2023.12.15 | 2024.01.01 | 国家税务总局四川省税务局等五部门发布《关于优化调整社会保险费申报缴纳流程的公告》<br>Announcement on Optimizing and Adjusting the Declaration and Payment Process of Social Insurance Premiums (issued by the State Administration of Taxation, Sichuan Province Taxation Bureau and four other departments)   |
| 吉林省<br>Jilin    | 2023.12.15 | 2024.01.01 | 国家税务总局吉林省税务局等六部门发布《关于优化调整社会保险费申报缴纳流程的公告》<br>Announcement on Optimizing and Adjusting the Declaration and Payment Process of Social Insurance Premiums (issued by the State Administration of Taxation, Jilin Province Taxation Bureau and five other departments)     |
| 河北省<br>Hebei    | 2023.12.15 | 2024.01.01 | 国家税务总局河北省税务局等五部门发布《关于优化调整社会保险费申报缴纳流程的公告》<br>Announcement on Optimizing and Adjusting the Declaration and Payment Process of Social Insurance Premiums (issued by the State Administration of Taxation, Hebei Province Taxation Bureau and four other departments)     |



#### 四、新规速递：上海市人社局进一步规范劳务派遣用工

##### Quick View of New Regulations: Shanghai Municipal Human Resources and Social Security Bureau Further Regulates the Labor Dispatch

2023年12月5日，上海市人社局发布《关于规范本市劳务派遣用工若干问题的意见》，在2014年6月30日发布的《关于规范本市劳务派遣用工若干问题的意见》（沪人社关发〔2014〕27号）的基础上，进一步明确了劳动派遣用工要点问题，以下问题值得注意：

On 5 December 2023, the Shanghai Municipal Human Resources and Social Security Bureau issued the Opinions on Several Issues Concerning the Regulation of Labor Dispatch in Shanghai, which further clarified the issues on key points of labor dispatch on the basis of Opinion issued on June 30, 2014. The following issues are worth noting:

1. 因不符合许可条件，派遣单位的《劳务派遣经营许可证》有效期满未延续或者被撤销、吊销的，原依法订立的劳动合同和劳务派遣协议可继续履行至派遣期限届满；

If the dispatching enterprise's Labor Dispatching Operation License has not been renewed at the expiry of its validity period or has been revoked or cancelled due to non-compliance with the licensing conditions, the original legally concluded labor contract and labor dispatching agreement may continue to be performed until the expiry of the dispatch period.

2. 对派遣员工与本单位同类岗位的劳动者实行相同的劳动报酬分配办法；

The same method of allocating labor remuneration shall be applied to dispatched employees as to employees in similar positions in the enterprise.

3. 用工单位应当按照规定确定适用劳务派遣用工的辅助性岗位范围；

The employing enterprise shall, in accordance with the regulations, determine the scope of auxiliary positions to which labor dispatch is applicable.

4. 对于跨地区的劳务派遣，如果外省市劳务派遣单位未在本市设立分支机构的，由本市用工单位办理用工备案手续，并按照本市标准，在本市代劳务派遣单位为派遣员工缴纳社会保险；

For cross-regional labor dispatch, if the labor dispatching enterprise from another province or city has not set up a branch in Shanghai, the employing enterprise in Shanghai shall go through the procedures of filing for the record of employment and shall pay social insurance for the dispatched employees on behalf of the labor dispatching enterprise in

Shanghai in accordance with Shanghai's standards.

5. 派遣用工转为人力资源服务外包的，应当调整原劳务派遣法律关系所形成对劳动者的管理方式，根据人力资源服务外包的性质，参照直接管理和间接管理的原则合理确定管理界限。用工单位以承揽、外包等名义，按照劳务派遣用工形式使用劳动者的，按照《劳务派遣暂行规定》处理。

If the labor dispatch is converted into labor outsourcing services, the management of the workers towards workers under the original labor dispatch legal relationship shall be adjusted. The boundaries of management shall be reasonably determined in accordance with the nature of the labor outsourcing services, with reference to the principles of direct management and indirect management. Where an employer uses workers under the form of labor dispatch in the name of contracting or outsourcing, it shall be handled in accordance with the Interim Provisions on Labor Dispatch.

## 五、典型案例：最高院发布关于劳动合同纠纷的公报案例，陕西省、贵州省分别发布劳动人事争议典型案例

[Exploration of Typical Cases: The Supreme People's Court Released Typical Labor Contract Disputes Cases, and Shaanxi Province and Guizhou Province Successively Released Typical Cases of Labor and Personnel Disputes](#)

各地陆续发布劳动人事争议典型案例。2023年第11期《最高人民法院公报》中，公报了一起由南京市报送的劳动合同纠纷案；2023年12月6日，贵州省高级人民法院发布《2023年度劳动人事争议纠纷典型案例》；2023年12月14日，陕西省人社厅和陕西省高级人民法院联合发布了《陕西省劳动人事争议典型案例（第二批）》。其中，我们认为，下述案例需重点关注：

Typical cases of labor and personnel disputes were successively released in different regions. In the 11th issue of 2023 of the Gazette of the Supreme People's Court, a case of labor contract dispute reported by Nanjing was published. On December 6, 2023, the Guizhou Higher People's Court released the "Typical Cases of Labor and Personnel Disputes in the 2023". On 14 December 2023, the Shaanxi MOHRSS and the Higher People's Court jointly released the "Typical Cases of Labor and Personnel Disputes in Shaanxi Province (Second Batch)". Among them, we highlight below cases for reference:

**1. 特殊情形下即使未签书面劳动合同，也可不予支持员工主张未订立书面劳动合同二倍工资差额的请求。**在该案例中，虽然员工与公司未签订书面劳动合同，但法院认为：（1）公司办理了人事招录手续、对劳动关系进行备案登记、缴纳了社会保险，在主观意图上并无明显故意；（2）在形式上，相关书面文件和备案登记已包含书面劳动合同的实质内容，达到了确定双方权利义务的法律效果；（3）在合同

目的实现上，公司未否认劳动关系，员工主张权益未受阻；（4）在法律原则上，员工对劳动合同的法律性质和未签的后果系明知，未积极主张签订劳动合同与诚信原则不符。因此，员工的主张未获支持。

The employee's request to claim the difference of double wages may not be supported under special circumstances, even if a written labor contract has not been signed. In this case, although the employee and the employer did not sign a written labor contract, the court held that: (1) the employer handled the recruitment procedures, filed and registered the labor relationship, paid social insurance, and there was no obvious intention of not signing a written contract; (2) in terms of formal aspect, the relevant written documents and filed registration have included the substance of the written labor contract, and achieved the legal effect of determining the rights and obligations of the parties; (3) in the realization of the purpose of the contract, the employer had not denied the labor relationship, the employee had not been prevented from claiming his rights and interests; (4) in the principle of law, the employee was aware of the legal nature of the labor contract and the consequences of the failure to sign the written contract, and his lack of active advocacy for the signing of the labor contract was inconsistent with the principle of good faith. Therefore, the employee's claim was not supported.

**2. 用人单位以劳动者欺诈为由解除劳动合同合法性的审查标准。**在一个案例中，员工职位为艺术培训学校的播音主持教师，其面试时提供虚假学历证书和小学教师资格证书，法院认为该员工的行为致使学校作出错误意思表示，构成法律意义上的欺诈；另一案例中，员工职位为销售经理，其在入职登记表的“有无法律诉讼案件纠纷或判决”一栏填写“无”，但实际该员工与前用人单位存在劳动争议，法院认为隐瞒其与前单位的涉诉情况与履行劳动合同无关联，不构成法律意义上的欺诈。

Criteria for reviewing the legality of an employer's termination of an employment contract due to employee fraud. In one case, the employee was a broadcasting teacher in an art training school, and provided false diploma and Elementary Teacher Certificate during the interview. The court held that the employee's behavior caused the school to make a wrong manifestation of intention, which constituted fraud in the legal sense. In another case, the employee was a sales manager and filled out the column of "Whether there is a dispute in a lawsuit case or a judgment" in the registration form in the "no", but in fact the employee and the former employer did have a labor dispute. The court held that the concealment of the existence of a labor dispute lawsuit with his former employer was not linked to the fulfillment of the labor contract and did not constitute fraud in the legal sense.



## 六、典型案例：上海市三法院分别发布劳动争议相关典型案例

## Exploration of Typical Cases: Three Courts in Shanghai Released Labor Disputes Typical Cases

**1. 上海市高级人民法院发布“稳定就业”相关的典型案例**

## Shanghai Higher People's Court Released Typical Cases Related to Stabilizing Employment

2023年12月1日，上海市高级人民法院召开上海法院司法服务保障稳定就业、促进消费新闻发布会，共发布了5个“稳定就业”相关的典型案例，体现出法院通过劳动争议多元解纷机制化解纠纷以及根据事实定分止争的特点。

On December 1, 2023, the Shanghai Higher People's Court held a press conference on the judicial services to ensure stable employment and promote consumption in Shanghai, and released five typical cases related to “stabilizing employment”, reflecting the court's characteristics of resolving labor disputes through the multiple disputes settlement mechanism, and settling labor disputes based on facts.

**2. 上海市徐汇区人民法院发布《涉民营企业劳动争议案件审判白皮书》**

## Shanghai Xuhui District People's Court Released White Paper on Labor Dispute Cases Involving Private Enterprises

2023年12月8日，上海市徐汇区人民法院举行新闻发布会，发布《2018年至2022年涉民营企业劳动争议案件审判白皮书》，包含8起典型案例。我们认为下述案例值得关注：

On December 8, 2023, the Shanghai Xuhui District People's Court held a press conference and released the White Paper on Labor Dispute Cases Involving Private Enterprises from 2018 to 2022, which contained eight typical cases. Among them, we highlight below cases for reference:

案例1中，公司在员工报到5日后以不再设立录用通知书中载明的岗位为由拒绝签订劳动合同，法院认定公司违背了诚实信用原则，需按照员工在原公司月工资的1.5倍向员工赔偿经济损失。案例8中，员工离职后未与公司妥善解决尚未完成的工作事宜，不符合诚信履约的法律原则，有违社会主义核心价值观，员工意识到行为不当后和公司达成调解协议。

In the Case I, the employer refused to sign the labor contract on the grounds that job position set out in the offer letter would no longer be existed five days after the employee started work. The court found that the employer had violated the principle of good faith, and was required to compensate the employee for the economic loss in accordance with 1.5 times the employee's monthly salary in the previous employer. In the Case IIX, the employee departed from the employer and did not properly handle the pending work matters with the employer, which was not in line with the legal principle of good faith, violated the core socialist values. The employee realized the misconduct and reached a mediation agreement.

the employer.

### 3. 上海市奉贤区人民法院发布《劳动争议审判执行案件白皮书》

Shanghai Fengxian District People's Court Released White Paper on Labor Dispute Trial and Enforcement Cases

2023年12月15日，上海市奉贤区人民法院发布《劳动争议审判执行案件白皮书》。其中案例5值得关注，该案例中，员工近五年中先后向不同的用人单位提起十几次仲裁与诉讼，其请求多包含未签劳动合同双倍工资差额，并多次对劳动合同中的签名提出笔迹鉴定后获得非本人所签的鉴定结论。该法院审理时考虑到员工的书写样本中笔迹特征未得到充分反映，因而调取了员工在另案庭审笔录中书写的签名用以鉴定，并认定员工在劳动合同中的签名为本人所签。后员工又提起新的劳动合同纠纷且再次申请鉴定，奉贤法院根据法定代表人和员工关于劳动合同到期时间的聊天记录，未安排进行笔迹鉴定，认定劳动合同的真实性，未支持员工要求双倍工资的主张。

On 15 December 2023, Shanghai Fengxian District People's Court issued a White Paper on Labor Dispute Trial and Enforcement Cases. In Case V of the White Paper, the employee filed over a dozen arbitration and litigation cases in the past five years against different employers, and his requests usually included the difference of double wages for not signing a written labor contract. He had requested the handwriting verification of the signatures repeatedly in the labor contract for many times, and then obtained the identification conclusion that the signatures were not signed by the employee himself. The court taking into account the employee's handwriting characteristics in the handwriting sample were not fully reflected, and thus accessed to the employee's signature written in the transcripts of other trials for identification, and found that the employee's signature in the labor contract was signed by himself. Thereafter the employee filed a new labor contract dispute and applied for handwriting verification again, Fengxian Court did not arrange the handwriting verification, but confirmed the authenticity of the labor contract, and did not support the employee's claim for the difference of double wages based on the chat records between the legal representative and the employee about the expiration time of the labor contract.



## 七、典型案例：北京市东城区人民法院发布两批劳动用工相关典型案例

Exploration of Typical Cases: Beijing Dongcheng District People's Court Released Two Batches of Typical Cases Related to Labor and Employment

### 1. 北京市东城区人民法院（“东城法院”）发布能动司法审理劳动争议典型案例

## Beijing Dongcheng District People's Court ("Dongcheng Court") Released Typical Cases of Active Judicial Trial of Labor Disputes

2023年11月11日，东城法院发布能动司法审理劳动争议典型案例。典型案例裁审观点如下：

On 11 November 2023, Dongcheng Court issued typical cases of active judicial trial of labor disputes. The judicial views are as follows:

a. 员工在职期间将公司的客户信息共享给竞争者，法院认定在劳动合同履行期间劳动者负有保密义务，用人单位约定在职期间的保密违约金不违反法律规定，就双方约定的30万元违约金，法院综合考虑被告的违约行为、收入水平、过错程度及损失情况，酌减至4万元。

The employee shared the employer's customer information with a competitor of the employer. The court held that the employee had a duty of confidentiality during the performance of the employment contract, and that the employer's agreement on liquidated damages for confidentiality duty during his employment did not violate the laws and regulations. With regard to the liquidated damages of 300,000 RMB agreed by both parties, the court reduced the amount to 40,000 RMB at its discretion, taking into account the employee's default behavior, level of income, degree of fault and damages.

b. 员工两次以生病为由申请病假后旅游，旅游中拍摄的跳跃照片也与病情相悖，该行为既有违诚信也有违职业操守，公司解除劳动合同合法。

The employee applied for sick leave on the grounds of illness and then traveled twice, and the jumping photos taken during the travel did not correspond to his body condition, which was against both integrity and professional conduct therefore the employer terminated the employment contract legally.

c. 员工因父亲病危请假，请假当日回家照顾其父亲，并于假期内提供了父亲病历照片，但未获批，公司以员工构成旷工为由解除劳动合同。法院认为公司未体现出以人为本的发展理念，与社会主义核心价值观中友善的要求不符，亦有悖中华民族的传统孝文化，既不合情也不合理，属于违法解除。

The employee took a leave of absence due to his father's critical illness, went home to take care of his father, and provided photos of his father's medical records during the leave, but the employer did not approve and terminated the employment contract on the grounds that the employee was absent from work. The court held that the employer failed to follow the concept of people-oriented development, and was inconsistent with the requirement of friendliness in the socialist core values and contrary to the traditional filial piety culture of the Chinese, was neither reasonable nor sensible and it shall be deemed as illegal termination of the employment contract.

## 2. 东城法院发布《雇主责任保险案件审判白皮书》

### Dongcheng Court Releases White Paper on Trial of Employers' Liability Insurance Cases

2023年12月29日，东城法院召开新闻发布会发布了《雇主责任保险案件审判白皮书（2020-2023年）》。该《白皮书》的典型事例1中，保险公司以伤者不符合保险条款中载明的“雇员”定义，伤者与用工单位是劳务关系而非劳动关系拒赔，法院审理认为雇主责任保险中的“雇佣关系”不应特指劳动关系，雇主与雇员的概念也不应特指劳动关系中的用人单位和劳动者，判决保险公司赔偿。

On December 29, 2023, Dongcheng Court held a press conference to release the White Paper on Trial of Employers' Liability Insurance Cases (2020-2023). In the Case I of the White Paper, the insurance company refused to pay compensation on the grounds that the injured person did not meet the definition of "employee" set forth in the insurance policy, and that the injured person and the employer were in a service relationship rather than an employment relationship. The court held that the "relationship" in the employer's liability insurance should not specifically refer to the employment relationship, and the concept of enterprise and worker should not specifically refer to the employer and employee in the employment relationship, and awarded compensation to the insurance company.

目前的非劳动关系用工实践中，企业通常通过雇主责任险防范和控制用工风险。法院的审理口径明确雇主责任保险中的“雇佣关系”不应特指劳动关系，应做广义解释，和雇主责任险的定位一致。

In the current practice of engagement in non-labor relationship, enterprises usually prevent and control the risk of employment through employer's liability insurance. The court's decision made it clear that the "relationship" in the employer's liability insurance should not refer to the labor relationship in particular, but should be interpreted in a broader sense, which is consistent with the goals of the employer's liability insurance.

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